

AMENDED IN ASSEMBLY MAY 27, 2004

AMENDED IN SENATE APRIL 13, 2004

SENATE BILL

No. 1210

Introduced by Senator Torlakson
(Coauthor: Senator Ducheny)
(Coauthor: Assembly Member Bates)

February 10, 2004

An act to add Part 6 (commencing with Section 22400) to Division 2 of the Public Contract Code, and to amend Section 217 of, and to add and repeal Sections 217.7, 217.8, and 217.9 to, the Streets and Highways Code, relating to highways.

LEGISLATIVE COUNSEL'S DIGEST

SB 1210, as amended, Torlakson. ~~Highways~~—*Design-build transportation infrastructure project contracts: design-sequencing contracts.*

(1) Existing law sets forth procedures applicable to public contracts.

This bill would establish new procedures applicable to all public agencies relative to design-build transportation infrastructure projects.

(2) Existing law authorizes the Department of Transportation until January 1, 2005, to conduct a pilot project to let design-sequencing contracts, as defined, for the design and construction of not more than 12 transportation projects, to be selected by the Director of Transportation.

This bill would establish a phase 2 of this pilot project that would be in effect until January 1, 2010. The bill would require the director to consider selecting projects that improve interregional and intercounty routes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. *Part 6 (commencing with Section 22400) is added to Division 2 of the Public Contract Code, to read:*

PART 6. TRANSPORTATION INFRASTRUCTURE
DESIGN-BUILD ACT

22400. *This part shall be known as, and may be cited as, the Transportation Infrastructure Design-Build Act.*

22401. *This part enables public entities to use a best value process for procurement of design-build contracts for transportation infrastructure projects.*

22402. *The Legislature finds and declares all of the following:*

(a) *It is in the best interests of state, regional, and local public entities to construct, modernize, retrofit, replace, improve, rehabilitate, renovate, convert, and repair transportation infrastructure projects in a cost-efficient manner that represents the best overall value to the taxpayers. To accomplish this goal, state, regional, and local public entities must have the authority and ability to utilize the best possible project delivery process available.*

(b) *The design-build delivery methodology is an attractive and valuable alternative to use of a design-bid-build methodology, and can improve project delivery in the following ways:*

(1) *Accelerating delivery schedules and completion of the project.*

(2) *Shifting the liability and management risk for cost containment and project completion and operation from the public entity to the design-build contractor.*

(3) *Increasing cost savings due to improved coordination and communication between the project designer and contractor.*

(4) *Reducing construction complexity and decreasing the number of change orders due to early collaboration between design and construction disciplines.*

(5) *Minimizing the project's life cycle costs.*

1 (6) *Improving the project's reliability, performance, and*
2 *operational efficiencies.*

3 (7) *Placing accountability and responsibility for the project's*
4 *design and construction in a single design-build team or entity.*

5 22403. (a) *In enacting this part, the Legislature intends to*
6 *allow state, regional, and local entities to use the design-build*
7 *delivery methodology for transportation infrastructure projects*
8 *when those entities deem it is in the public interest to do so.*

9 (b) *The Legislature does not intend this part to preclude any*
10 *public entity from proceeding with a design-build procurement*
11 *pursuant to separate enabling authorization. Public entities shall*
12 *have the option to proceed using the procurement process*
13 *described in this part or any other process permitted by applicable*
14 *law.*

15 (c) *This part includes a process for the selection and award of*
16 *subcontracts entered into by design-build contractors pursuant to*
17 *this part in a manner that retains protection for subcontractors,*
18 *while also enabling design-build projects to be administered in an*
19 *efficient fashion.*

20 22404. *The following definitions apply to this part:*

21 (a) *"Best value process" means a procurement process*
22 *whereby a public entity selects a contractor based on (1) an*
23 *evaluation of proposals received with reference to price and other*
24 *factors deemed appropriate by the public entity and (2) a*
25 *determination, based on that evaluation, that the proposal*
26 *submitted by the selected contractor offers the best value to the*
27 *public.*

28 (b) *"Design-build" means a delivery methodology in which*
29 *both the design and construction of a project are procured from a*
30 *single entity.*

31 (c) *"Design-build contract" means contract between a public*
32 *entity and a design-build contractor to furnish all or some of the*
33 *planning, architecture, engineering, and related professional*
34 *services necessary for a given public project, and to furnish labor,*
35 *materials and other construction services for the same public*
36 *project. A design-build contract awarded pursuant to this part may*
37 *include operation and maintenance elements, if the inclusion of*
38 *those elements (1) is necessary, in the reasonable judgment of the*
39 *public entity, to assess vendor representations and warranties,*
40 *performance guarantees, or life cycle efficiencies, and (2) does not*

1 conflict with collective bargaining agreements to which the public
2 entity is a party.

3 (d) “Design-build contractor” means a partnership,
4 corporation, or other legal entity that is an appropriately licensed
5 contractor and that is either appropriately licensed to perform all
6 required design professional services required for the project or
7 that has contracted with appropriately licensed design
8 professionals to provide such services.

9 (e) “Public entity” has the same meaning as defined in Section
10 1100 and includes joint powers authorities.

11 (f) “Transportation infrastructure project” means any of the
12 following:

13 (1) A state or local highway, bridge, or tunnel project, and
14 associated improvements.

15 (2) A transit system or passenger or freight railroad, including
16 a rail transit system, commuter railroad, intercity railroad,
17 high-speed railroad, and bus rapid transit system, and associated
18 improvements.

19 (3) Improvements that are reasonably necessary for the
20 effective operation of a method of transportation, including an
21 intermodal transfer or staging area, weigh station, inspection
22 station, rest area, service station, restaurant, train or bus station,
23 warehouse, freight interchange, switching yard, maintenance
24 yard, utility facility, drainage facility, and pipeline pumping
25 station.

26 22405. Notwithstanding any other provision of law, a public
27 entity may award a design-build contract for any transportation
28 infrastructure project by following the requirements of this part.

29 22406. Before commencement of a design-build procurement
30 under this part, the public entity shall publish separately or
31 incorporate into the procurement documents applicable rules and
32 procedures applicable to the procurement to ensure that the
33 process is conducted in accordance with the requirements of this
34 part, in a fair and impartial manner. Those procedures shall
35 include, but not be limited to, the following:

36 (a) Public announcement procedures.

37 (b) Letters of interest requirements.

38 (c) Prequalification requirements for the design-build teams,
39 or shortlisting criteria and procedures.

40 (d) Scope of work statement that may include the following:



- 1 (1) *Preliminary design concepts.*
- 2 (2) *Design criteria, needs, and objectives.*
- 3 (3) *Warranty and quality control requirements.*
- 4 (4) *Applicable standards.*
- 5 (5) *Environmental documents.*
- 6 (6) *Constraints.*
- 7 (7) *Time expectations or limitations.*
- 8 (8) *Incentives or disincentives.*
- 9 (9) *Other special considerations.*

10 (e) *Proposal requirements including a requirement to provide*
11 *all of the following:*

- 12 (1) *A sealed cost proposal.*
- 13 (2) *A critical path matrix schedule and cash flow requirements.*
- 14 (3) *Proposal security.*
- 15 (f) *Technical review process.*
- 16 (g) *Selection and award processes.*

17 22407. (a) *The first step in the procurement process for a*
18 *design-build contract under this part shall be to request and*
19 *evaluate statements of qualifications submitted by interested*
20 *design-build firms, and to prequalify or shortlist the design-build*
21 *firms that will be invited to submit proposals in accordance with*
22 *the criteria published by the public entity. The public entity must*
23 *receive at least three letters of interest before requesting statements*
24 *of qualifications. The prequalification or shortlisting decision*
25 *shall be based in part on an evaluation of the demonstrated*
26 *competence and the professional qualifications of architectural,*
27 *landscape architectural, engineering, environmental, land*
28 *surveying, and construction management firms. This step shall*
29 *satisfy the requirements of Sections 4526 and 4529.12 of the*
30 *Government Code regarding procurement requirements*
31 *applicable to professional services contracts.*

32 (b) *The second step in the procurement process shall be to*
33 *request and evaluate proposals. The public entity shall request*
34 *proposals from no fewer than three of the design-build firms*
35 *submitting letters of interest. If a design-build firm withdraws from*
36 *consideration after the public entity requests proposals, the public*
37 *entity may continue if at least two proposals are received.*

38 (c) *The procurement process may also include discussions with*
39 *the proposers following receipt of initial proposals, followed by a*
40 *request for and evaluation of final proposals. The process may also*

1 *include negotiations with the selected proposer prior to award of*
2 *the contract.*

3 *22408. The request for proposals shall include, but not be*
4 *limited to, the following elements:*

5 *(1) Identification of the basic scope and needs of the project or*
6 *contract, the expected cost range, and other information deemed*
7 *necessary by the public entity to inform interested parties of the*
8 *contracting opportunity and of the methodology that will be used*
9 *by the public entity to evaluate proposals.*

10 *(2) Significant factors that the public entity reasonably expects*
11 *to consider in evaluating proposals on a best value basis, including*
12 *cost or price, life cycle costs, project features, functions, and all*
13 *other nonprice related factors.*

14 *(3) The relative importance or weight assigned to each of the*
15 *factors identified in the request for proposals. If a nonweighted*
16 *system is used, the public entity shall specifically disclose whether*
17 *all evaluation factors other than cost or price, when combined, are*
18 *one of the following:*

19 *(A) Significantly more important than cost or price.*

20 *(B) Approximately equal in importance to cost or price.*

21 *(C) Significantly less important than cost or price.*

22 *22409. (a) The public entity shall evaluate the submissions*
23 *received in response to the request for proposals, based on the*
24 *criteria and in accordance with the selection procedures specified*
25 *in the request for proposals, and in compliance with rules relating*
26 *to discussion of proposals, submission of final proposals, and*
27 *evaluations of the proposals submitted.*

28 *(b) The award of the design-build contract shall be made to the*
29 *responsible proposer whose proposal is determined to offer the*
30 *best value to the public. The public entity may reserve the right to*
31 *move on to the second (and, if necessary, the third) ranked*
32 *responsive proposer if the public entity is not able to conclude a*
33 *contract satisfactory to the public entity with the first-ranked*
34 *responsive proposer.*

35 *(c) The public entity shall publicly announce its award,*
36 *identifying the design-build contractor to whom the award is*
37 *made, and shall provide with the announcement a written decision*
38 *supporting the public entity's contract award that states in detail*
39 *the basis of the award. The notice of award shall also identify the*
40 *second-ranked and third-ranked design-build firms.*

1 (d) *The public entity shall maintain a file containing all of the*
2 *information, documents, and submissions regarding the*
3 *procurement process.*

4 22410. *Any construction, alteration, demolition, repairs, or*
5 *other works of improvement performed under a contract awarded*
6 *pursuant to this part shall be considered a public works project*
7 *subject to Chapter 1 (commencing with Section 1720) of Part 7 of*
8 *Division 2 of the Labor Code, and shall be enforced by the*
9 *Department of Industrial Relations in the same way it carries out*
10 *this responsibility under the Labor Code.*

11 22411. (a) *The public entity, in each design-build request for*
12 *proposals, may identify specific types of subcontractors that must*
13 *be included in the design-build contractor's statement of*
14 *qualifications and proposal. In selecting the types of*
15 *subcontractors that must be listed, the public entity shall limit*
16 *identification to only those types of subcontractors deemed*
17 *essential for proper completion of the project. The design-build*
18 *firm may identify subcontractors in its proposal in addition to*
19 *those required to be identified by the public entity. All construction*
20 *subcontractors that are identified in the proposal shall be afforded*
21 *all the protections of Chapter 4 (commencing with Section 4100)*
22 *of Part 1.*

23 (b) *With the exception of the subcontracts listed in the proposal,*
24 *the design-build contractor shall award each construction*
25 *subcontract in excess of one-half of 1 percent of the design-build*
26 *contract price allocable to construction work in accordance with*
27 *a competitive procurement process satisfactory to the public entity*
28 *and meeting the requirements of this subdivision. The*
29 *subcontracting process shall include the following steps:*

30 (1) *Provide public notice of the availability of construction*
31 *work to be subcontracted.*

32 (2) *Provide a fixed date and time at which the subcontracted*
33 *construction work will be awarded.*

34 (3) *Establish reasonable prequalification criteria and*
35 *standards.*

36 (4) *Provide that the subcontracted construction work shall be*
37 *awarded either on a best value basis or to the lowest responsible*
38 *bidder.*

39 22412. (a) *The design-build contractor shall provide*
40 *payment and performance bonds for the project in the form and in*

1 *the amount required by the public entity, and issued by a surety or*
2 *sureties satisfactory to the public entity. Notwithstanding any*
3 *other provision of law, the amount of the payment bond shall be*
4 *equal to the total design-build contract price unless the public*
5 *employee delegated responsibility for the contract makes a written*
6 *determination supported by specific findings that a payment bond*
7 *in that amount is impractical, in which case the amount of the*
8 *payment bond shall be set by that public employee. In no case shall*
9 *the amount of the payment bond be less than the amount of the*
10 *performance bond.*

11 SEC. 2. Section 217 of the Streets and Highways Code is
12 amended to read:

13 217. The following definitions apply for the purposes of this
14 article:

15 (a) “Design” is a plan completed to a level of 30 percent.

16 (b) “Design-sequencing” is a method of contracting that
17 enables the sequencing of design activities to permit each
18 construction phase to commence when design for that phase is
19 complete, instead of requiring design for the entire project to be
20 completed before commencing construction.

21 (c) A “design-sequencing contract” is a contract between the
22 department and a contractor that requires the department to
23 prepare a design and permits construction of a project to
24 commence upon completion of design for a construction phase.

25 (d) This section shall remain in effect only until January 1,
26 2010, and as of that date is repealed, unless a later enacted statute,
27 that is enacted before January 1, 2010, deletes or extends that date.

28 ~~SEC. 2.~~

29 SEC. 3. Section 217.7 is added to the Streets and Highways
30 Code, to read:

31 217.7. (a) Notwithstanding Chapter 1 (commencing with
32 Section 10100) of Part 2 of Division 2 of the Public Contract Code,
33 except Section 10128 of that code, and Chapter 10 (commencing
34 with Section 4525) of Division 5 of Title 1 of the Government
35 Code, the department may conduct a phase two pilot program to
36 let design-sequencing contracts for the design and construction of
37 not more than 12 transportation projects, to be selected by the
38 director. For the purpose of this article, these projects shall be
39 deemed public works.

(b) In selecting projects for the pilot program authorized under subdivision (a), the director shall attempt to balance geographical areas among test projects as well as pursue diversity in the types of projects undertaken. In this process, the director shall consider selecting projects that improve interregional and intercounty routes.

(c) To the extent available, the department shall seek to incorporate existing knowledge and experience on design-sequencing contracts in carrying out its responsibilities under subdivision (a).

(d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

~~SEC. 3.~~

SEC. 4. Section 217.8 is added to the Streets and Highways Code, to read:

217.8. (a) Not later than July 1, 2006, and July 1 of each subsequent year during which a contract under the phase two pilot program, as described in Section 217.7, is in effect, the department shall prepare a status report on its contracting methods, procedures, costs, and delivery schedules. Upon completion of all design-sequencing contracts, but in no event later than January 1, 2010, the department shall establish a peer review committee to prepare a report for submittal to the Legislature that describes and evaluates the outcome of the contracts provided for in Section 217.7, stating the positive and negative aspects of using design-sequencing as a contracting method.

(b) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

~~SEC. 4.~~

SEC. 5. Section 217.9 is added to the Streets and Highways Code, to read:

217.9. Design-sequencing contracts under the phase two pilot program, as described in Section 217.7, shall be awarded in accordance with all of the following:

(a) The department shall advertise design-sequencing projects by special public notice to contractors.

1 (b) Contractors shall be required to provide prequalification
2 information establishing appropriate licensure and successful past
3 experience with the proposed work.

4 (c) This section shall remain in effect only until January 1,
5 2010, and as of that date is repealed, unless a later enacted statute,
6 that is enacted before January 1, 2010, deletes or extends that date.

